

## **PROFESSIONAL ENGINEERS SECTION MEETING**

### **MINUTES**

The Professional Engineers Section of the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) met on February 8, 2006, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present

Nico De León  
Stanley C Harris  
Wiley V Johnson, III

Staff present for all or part of the meeting were

Karen W O'Neal, Deputy Director of Licensing and Regulation Division  
Mark N Courtney, Executive Director  
Marian H Brooks, Program Administrator  
Earlyne Perkins, Legal Assistant  
Michelle Gowen, Administrative Assistant

No representative was present from the Office of the Attorney General

Mr Harris, Chair, called the meeting to order at 9 07 a m

**Call to Order**

Mr Johnson moved to approve the agenda Mr De León seconded the motion which was unanimously approved by members De León, Harris, and Johnson

**Approval of  
Agenda**

Mr Harris turned over the position of Chair to Mr De León and recused himself from the meeting

**Transfer of Chair**

Dr Kaplan was present to address the Section members and state her concerns with the Summary and Recommendation prepared by Mr Harris Dr Kaplan believes there are three problems with the Summary and noted them for the Section member's consideration Dr Kaplan provided a handout of her remarks Her counsel, John Kaplan, was present and did not wish to address the Section members

**File Number  
2006-02397,  
Kathleen Kaplan**

Regarding File Number 2006-02397, Kathleen Kaplan, the Section Members reviewed the record of the Informal Fact-Finding Conference, which consisted of the application file, transcripts and exhibits, the Summary of the Informal Fact-Finding Conference, and Dr Kaplan's presentation Mr Johnson moved to recommend that the Board accept the Summary and Recommendation of the presiding Board member which recommends there be another Informal Fact-Finding Conference held in

order that appropriate notice be given with the correct regulations cited and in order to provide Dr Kaplan the opportunity to address the relevant regulations and provide additional documentation regarding her experience Mr De Léon seconded the motion which was unanimously approved by members De Léon and Johnson. As the presiding Board member, Mr Harris was not present during the discussion or vote

Mr Harris returned to the meeting and resumed the position of Chair

**Transfer of  
Chair**

Mr Johns was present to address the Section members and apologize for not informing the Board of the situation in Delaware Mr Johns stated that he concurs with the Summary and Recommendation of Mr De Léon, however, he did request that the Section members consider a fine in lieu of suspending his license as he has been punished enough

**File Number  
2005-03966,**

Regarding **File Number 2005-03966, David F. Johns**, the Section members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcripts and exhibits, and the Summary of the Informal Fact-Finding Conference and Mr John's presentation Mr Johnson moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, which cites a violation of 18 VAC 10-20-750 of the Board's 2002 regulations Mr Harris seconded the motion which was unanimously approved by members Harris and Johnson.

After Ms Perkins provided information regarding prior violations involving Mr Johns, Mr Johnson moved to recommend that the Board accept the Summary of the Informal Fact-Finding Conference and impose the following sanctions

A one year suspension of Mr Johns' PE license Further, upon the expiration of the suspension period, Mr Johns be placed on probation, pursuant to §54 1-207(7) of the *Code of Virginia*, until such time as Mr Johns presents evidence acceptable to the Board that he has successfully completed 8 hours of continuing education in the are of professional ethics, and 8 hours of continuing education in the area of hydraulics and water resources

Mr Harris seconded the motion which was unanimously approved by members Harris and Johnson As the presiding Board member, Mr De Léon was not present during the discussion or vote

Regarding **File Number 2005-04349, Nathan B. Carter**, the Section members reviewed the Consent Order as seen and agreed to by Mr Carter. Mr Johnson moved to recommend that the Board accept the Consent Order which cites a violation of 18 VAC 10-20-750 of the Board's 2004

**File Number  
2005-04349,  
Nathan B.  
Carter, Jr.**

regulations For this violation Mr Carter agrees to the suspension of his professional engineer license until such time as he submits evidence acceptable to the Board that he is in good standing with the Tennessee State Board of Architectural and Engineering Examiners Mr Harris seconded the motion which was unanimously approved by members Harris and Johnson As the reviewing Board member, Mr De Léon was not present during the discussion or vote

Regarding File Number 2006-01933, Daniel Logan Patete, the Section members reviewed the Consent Order as seen and agreed to by Mr Patete Mr Johnson made a motion to recommend that the Board accept the Consent Order which cites a violation of 18 VAC 10-20-770 of the Board's 2004 regulations For this violation Mr Patete agrees to pay a fine in the amount of \$250 00 as well as Board costs in the amount of \$150 00 Mr Harris seconded the motion which was unanimously approved by members Harris and Johnson As the reviewing Board member, Mr De Léon was not present during the discussion or vote

File Number  
2006-01933,  
Daniel Logan  
Patete

Mr Johnson disclosed that Bevin Alexander, Jr , one of the speakers for the Public Comment Period, is the attorney that represents the firm where Mr Johnson is employed For this reason, Mr Johnson felt it necessary to recuse himself from the Public Comment Period of the meeting as well as the discussion of agenda item #9, Discussion of the Design of Residential On-Site Sewage Systems Using Pre-Engineered Components

Public Comment  
Period

Robert Mayer, PE, President of the American Manufacturing Company, was present to speak to the Section in regards to design of residential on-site sewage systems Mr Mayer stated that his company manufactures septic systems that do not need to be designed by professional engineers Mr Mayer pointed out that he feels there is no need to require professional engineers to be the only profession that can safely install septic systems as soil professionals are capable of protecting the public's safety and welfare

Joel S Pinnix, PE, was present to address the Section on his views of GMP #125 Mr Pinnix stated he believes that the Department of Health has exceeded their legal authority in trying to define the role of professional engineers in the design of residential on-site septic systems Mr Pinnix noted that the Department of Health's policy is fundamentally flawed in its definition and trying to draw a line between the four types of septic systems and who can install them

Richard Blackwell, III, PE, of Blackwell Engineering, was present and spoke to the Section regarding his past discussions with the Department of Health regarding the design of residential on-site septic systems Mr Blackwell noted that he has asked repeatedly that the Department of Health consult DPOR in this matter and they have refused all requests Mr

Blackwell believes that a non-professional engineer performing certain designs and only having to get an approval by the Department of Health is a great concern to the public's health, safety and welfare

Tom Basham, PE, LS, was present and spoke to the Section on industry growth and the delay in the regulations to catch up with the industry for the design of residential on-site septic systems. Mr. Basham stated that there are several different kinds of septic systems and a professional engineer is not required for all systems. Mr. Basham stated that the Department of Health has sought to draw a line of when a professional engineer is needed. Mr. Basham stated there are several types of pre-packaged systems where there is no need to hire a professional engineer and there are several systems that a professional engineer should be required to design.

Neal P. Spiers, CPSS, AOSE, was present and stated to the Section that Soil Scientists and AOSE's are perfectly capable of designing these systems as well as taking care of the public's health and safety. Mr. Spiers stated that most systems are pre-designed by professional engineers and are able to be designed by non-professional engineers. Mr. Spiers believes that the pre-designed products can easily be used and have been used for several years with no risk to the public health. Mr. Spiers also believes GMP #125 is an attempt to clarify boundaries and that changes to GMP #125 take from other industries and give to the professional engineers profession.

Bevin Alexander, Jr., Esquire, provided the Section with a handout in hopes to contribute to the discussion. Mr. Alexander stated that there is no question that soil evaluators are valuable contributors to the community, however, can they determine what is safe for the public? Mr. Alexander noted that the Department of Health chose to ignore their own regulation and questions if they have the authority to do so. Mr. Alexander stated that the Department of Health exempted Type 3 systems and made way for non-professional engineers to design these systems though very few people have an understanding of how these systems really work. Mr. Alexander noted that he believes the Department of Health and DPOR need to connect to correct these issues.

Roger Cooley was present but did not wish to address the Section.

Allen L. Knapp, Department of Health, was present and gave a short presentation to the Section members regarding the regulation of residential on-site septic systems. Mr. Knapp reviewed the definitions as well as the three types of septic systems. Mr. Knapp informed the Section that informal plans are not required to be stamped by PE's and formal plans are required to be stamped by PE's. By law, if the Department of Health receives application plans and doesn't respond within 15 days, the application is automatically approved. Mr. Knapp reviewed the Department

of Health's regulations and went over what types of systems are able to be designed by non-licensed professionals and what systems are not. Mr. Knapp acknowledged that the Department of Health has drawn lines as to who can design what types of systems and noted that people are on both sides of the fence on this issue. Mr. Knapp stated he believes that the AOSE's should be able to do certain designs and he welcomes any dialogue with the Professional Engineers Section.

The Section members accepted the various handouts they were provided with during the public comment period and stated they would review all and return for the May 10<sup>th</sup> Section meeting for further discussion on the issue.

**Discussion of the  
Design of  
Residential On-  
Site Sewage  
Systems Using  
Pre-Engineered**

After discussion, the Section members decided to keep this matter under consideration pending receipt of additional documentation to determine whether to continue to accept degrees from Washington Accord Programs without evaluation.

**Discussion of  
Washington  
Accord  
Programs**

The Section members were provided with a letter and chart from Garland Archer of Fairfax County. Mr. Courtney stated the Department has tried to contact Mr. Archer several times to clarify his request with no response. The Section members stated that they would need more information from Mr. Archer in order to make an informed decision.

**Review of  
Engineering  
Duties in Fairfax  
County**

The section members reviewed the following legislation being considered by the General Assembly:

**Review of 2006  
Legislation**

HB1054 – Continuing Education for Architects, Professional Engineers, and Land Surveyors

HB521 – Acceptance of Plans from Landscape Architects

HB609 – Board of Directors of Professional Corporations

HB952 – ESOP's for Professional Corporations

The Section members were provided with various memorandums and notices from NCEES and the Accreditation Board for Engineering and Technology (ABET).

**Information  
from NCEES  
and ABET**

The Section members were provided with a spreadsheet prepared by staff showing the pass rates and number of candidates from Virginia schools from the October 2002 examination to the October 2005 examination.

**Review of FE  
Pass Rates for  
Virginia Schools**

Mr. Harris brought up his concerns with the Surveying Engineering degree from Ferris State University. The course syllabus confirmed this degree.

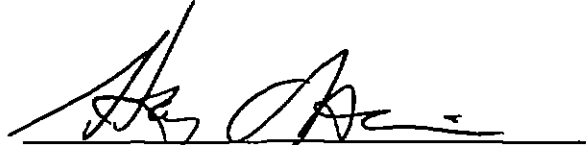
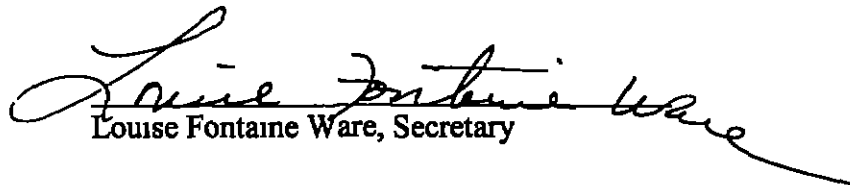
**Other Business**

program is designed to create a land surveyor, not a professional engineer

Conflict of Interest forms were completed by all members present

**Conflict of**  
**Interest Forms**  
**Adjourn**

There being no further business, the meeting was adjourned at 12 35 p m

  
Stanley C. Harris, Chair  
Louise Fontaine Ware, Secretary

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1 Name. Nico De León  
2 Title Member  
3 Agency Professional Engineers Section  
4 Transaction. Section Meeting on February 8, 2006  
5 Nature of Personal Interest Affected by Transaction \_\_\_\_\_  
\_\_\_\_\_ None \_\_\_\_\_

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction.

\_\_\_\_\_ Engineering \_\_\_\_\_

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature \_\_\_\_\_

Date \_\_\_\_\_

2/8/04

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

- 1 Name: Stanley C. Harris
- 2 Title. Member
- 3 Agency Professional Engineers Section
4. Transaction: Section Meeting on February 8, 2006
5. Nature of Personal Interest Affected by Transaction: NONE
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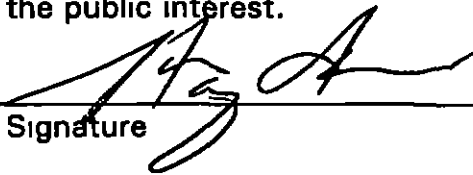
6 I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

ASME VSPE

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(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

  
Signature

\_\_\_\_\_  
Date



**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1. Name           Wiley V Johnson, III
2. Title.           Member
3. Agency.       Professional Engineers Section
4. Transaction.   Section Meeting on February 8, 2006
5. Nature of Personal Interest Affected by Transaction. Item #9 on the meeting agenda had an attorney representing a group of presenters that also represents my firm.  
I recused myself during this portion of the meeting.
6. I declare that.

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

Hurt & Proffitt, Inc.

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

  
Signature

2.8.06  
Date